

## **Rule 31, Ariz. R. Crim. P.**

### **APPEALS – Amicus Curiae Briefs, in general.....Revised 11/2009**

“Amicus curiae” is Latin for “friend of the court.” The Comment to Rule 31.25, Ariz. R. Crim. P., stresses that the purpose of an amicus curiae brief is to “assist the Court, not advocate a particular litigant’s case.” Amicus briefs should not duplicate the parties’ briefs; instead, they should “provide a broader, more abstract presentation of law that is not narrowly tied to the facts of the case” and “provide background and context for the Court’s decision.” *Id.*

Rule 31.25, Ariz. R. Crim. P., addresses the filing of amicus briefs in appeals from the superior court and states in part:

a. Filing and Form of Brief; Participation in Oral Argument.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of court granted upon motion. The brief shall be lodged with the motion, if any. The motion for leave shall identify the interest of the applicant state that the applicant has read the relevant brief, petition or motion and shall state the reasons accepting applicant’s amicus curiae brief would be desirable.

Thus, an organization or individual seeking to file an amicus brief must either obtain the written consent of all parties or file the brief along with a motion for leave to file it.

A brief filed without obtaining leave of court is the equivalent of an ex parte communication with the court and should be stricken and not read. Judicial Canon 2, Rule 2.9(a) prohibits a judge from considering ex parte communications or other communications outside the presence of the parties, with certain exceptions. Rules of the Arizona Supreme Court, Rule 81, Canon 2, Rule 2.9(a). However, “[a] judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.” Rules of the Arizona Supreme Court, Rule 81, Canon 2, Rule 2.9(a)(2). “An appropriate

and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.” Rules of the Arizona Supreme Court, Rule 81, Canon 2, Rule 2.9(a)(2), Comment 8.

To qualify as properly filed, an amicus brief must be signed by a person admitted to the Arizona Bar. Rule 31.13(b)(1)(5), Ariz. R. Crim. P., incorporated by reference in Rule 31.25, Ariz. R. Crim. P., requires that a brief include the name and State Bar number of counsel representing the party on whose behalf a brief is filed. Local Rules of Practice for the Superior Court, Maricopa County, Rule 2.15(a), requires that all documents filed with the court include the name and State Bar number of the attorney causing any document to be filed. Therefore, if an out-of-state attorney wishes to file an amicus brief in Arizona, he or she should be admitted *pro hac vice* under Supreme Court Rule 33(c). Allowing an attorney to appear *pro hac vice* is also within the discretion of the court. Rules of the Arizona Supreme Court, Rule 38(a)(5).